

Irving Oil Corp.
Attn: John J. Sciaba
190Commerce Way
Portsmouth, NH 03801

**ADMINISTRATIVE FINE
No. AF 04-071**

RE: Irving Bulk, Berlin, NH
UST ID # 0-114847

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Irving Oil Corporation, parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. Irving Oil Corporation ("Irving") is the registered owner of two underground storage tank ("UST") systems at the Berlin Unity Street Bulk facility ("the Facility"), further identified as UST # 0-114847, located on real property at Unity Street, Berlin, NH ("the Property").
3. On September 9, 2004 the Division issued Notice of Proposed Administrative Fine No. AF 04-071 ("the Notice") to Irving seeking fines totaling \$2,000 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. Specifically, the Notice cited Irving for violating RSA 146-C and Env-Wm 1401.31, by failing to maintain leak monitoring equipment in good working order at all times and failing to conduct the leak monitor's annual test for proper operation for two USTs. Pursuant to Env-C 607.03(m) the Division sought a fine of \$2,000.
5. In order to settle this matter, the Division and Irving have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.
6. Of the proposed fine, in the amount of \$2,000, 20% or \$400 shall be suspended due to Irving's history of compliance at this facility. An additional 20% or \$400 shall be suspended due to Irving being cooperative in returning the Facility to compliance status.
7. The suspended portion of the proposed fine, in the amount of \$800, is contingent on Irving maintaining the subject facility in compliance with New Hampshire Administrative Rules Env-Wm 1401 for a period of two years from the date of the execution of this document. If Irving fails to maintain compliance during the two-year period, the suspended portion of the proposed fine in the amount of \$800 shall become due and payable immediately. If Irving maintains compliance for the prescribed two-year period, the suspended portion of the fines shall be waived.

8. Irving agrees to pay the remaining portion of the proposed fine, \$1,200, upon execution of this Agreement by Irving.

9. Payment under Paragraph #8 and any payment that becomes due pursuant to Paragraph #7 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

10. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, the Department of Environmental Services ("DES") may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

11. By executing this Agreement, Irving waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

12. The effective date of this Agreement will be upon signature by an authorized representative of Irving, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

13. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,
Irving Oil Corp.

Date

7/28/05

By: [Signature]
Duly Authorized

COPY

Date

8/4/05

DES Waste Management Division

[Signature]
Anthony Giunta, Director

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This Motion to Accept Settlement agreement is granted this 9th day of August, 2005.

[Signature]
Michael P. Nunn, Commissioner
Department of Environmental Services

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